

**IN THE UNITED STATES BANKRUPTCY COURT
FOR NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

CALIFORNIA PALMS, LLC

DEBTOR.

CASE NO. **19-40267-jpg**

CHAPTER 11

JUDGE JOHN P. GUSTAFSON

**STATE OF OHIO, DEPARTMENT OF
TAXATION'S RESPONSE TO MOTION
FOR AN ORDER AUTHORIZING THE
SALE OF PROPERTY FREE AND
CLEAR OF LIENS PURSUANT TO 11
U.S.C. § 363**

The State of Ohio, Department of Taxation ("ODT") through special counsel, hereby objects to California Palms, LLC's ("Debtor") Motion for an Order Authorizing the Sale of Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 ("Motion"). (ECF Doc. No. 49). Debtor's motion seeks to sell a parcel of property identified as a hotel property in Austintown, Ohio to California Palms Inc. and California Palms Addiction Recovery Campus, Inc. ("CaliParc"). Debtor has not met its burden to sell the property outside of the ordinary course and the Motion should be denied.

The Debtor bears the burden to demonstrate that a sale out of the ordinary course of business will aid the debtor's reorganization. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.1983). "The Court may approve a sale of all of a debtor's assets under § 363(b) ""when a sound business purpose dictates such action."" *In re Nicole Energy Services, Inc.*, 385 B.R. 201, 210 (Bankr. S.D. Ohio 2008) quoting *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir.1986). As the Court stated in *Nicole Energy*:



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In making its determination under the *Stephens Industries* analysis, the Court considers the following factors: whether the terms of the proposed sale reflect the highest and best offer for the assets, whether the negotiations were conducted at arm's length, and whether the sale is in the best interest of the estate and its creditors.

Id at 210. Just as the U.S. Trustee has pointed out in its objections, there are numerous concerns raised by the proposed sale motion that leave substantial questions whether any of the above factors can be met.

First, there is nothing in the motion showing that the proposed sale price reflects the highest and best offer for the property. The proposed sale price is just barely greater than the amount that Debtor alleges is the payoff for Pender Capital's mortgage.¹ Debtor has provided no evidence of marketing or attempts to solicit other bids beyond a vague reference to an alternate bid in the amount of \$9.7 million from an unnamed buyer. (Motion at p. 17). Further, the sale price of \$3.7 million to California Palms Inc. and CaliParc is well below the value of \$9 million found by the appraisal previously offered by the Debtor. (ECF Doc. No. 2-1). The absence of any effort to market the property and the decision to enter into the private sale without exploring alternatives is grounds for denial of the motion. *See In re P.D.M. Co.*, 523 B.R. 558, 559 (Bankr.W.D.Mich. 2015).

Second, this agreement was not negotiated at arm's length. Here, Mr. Rucci is in control of the entities on each side of the transaction, the Debtor, California Palms Inc. and CaliParc. This close relationship between the entities is troubling considering the lack of evidence that the

¹¹ Debtor states several times that California Palms Inc. possesses 6 million dollars in equity in the property, but, at separate points, it states that the 6 million dollar amount is only an unsecured claim. Debtor then indicates that in addition to the sale price, California Palms would be releasing its claim. The validity of this alleged claim is unknown and extremely suspect. Accordingly, until sufficient evidence is produced concerning the claim, ODT does not believe that any increased value in the sale price can be accorded to the release of the claim.



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property was marketed. The proposed sale to entities controlled by Mr. Rucci, at well below the appraised value, without evidence that Debtor attempted to obtain other offers or otherwise market the property raises serious doubts that this sale is for adequate price and is in the best interests for the estate. *See In re Country Manor of Kenton, Inc.*, 172 B.R. 217, B.R.221 (Bankr.N.D. Ohio 1994). For these reasons, ODT requests that the Court deny the Motion.

If the Court determines that the sale is appropriate, ODT asserts and requests that its liens against the property be transferred to the sale proceeds. ODT currently hold two tax liens against the property:

LIEN NO.	LIEN DATE	JUDG. AMT.	LIEN BALANCE	ASSESSMENT NO.
2018 TL 01279	04/04/2018	\$8,052.83	\$8,349.57	100000675195
2018 TL 01280	04/04/2018	\$5,277.99	\$5,475.48	100000712605

For the reasons stated above, the State of Ohio, Department of Taxation respectfully requests that the Court deny Debtor's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 10, 2019, a true and correct copy of the foregoing was served via the court's Electronic Case Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:

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